

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Orland Sylve,
Plaintiff,

v.

James T. Georges, in individual and
representative capacity as trustee of
The Georges Family Trust;
Arcelia Georges, in individual and
representative capacity as trustee of
The Georges Family Trust;
Pit Stop Burgers, Inc., a California
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orland Sylve complains of Defendants James T. Georges, in individual and representative capacity as trustee of The Georges Family Trust; Arcelia Georges, in individual and representative capacity as trustee of The Georges Family Trust; Pit Stop Burgers, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic who cannot walk and who uses a wheelchair for mobility.

2. Defendant James T. Georges, in individual and representative capacity as trustee of The Georges Family Trust, owned the real property located at or about 20720 Normandie Avenue, Torrance, California, in August 2018.

3. Defendant Arcelia Georges, in individual and representative capacity as trustee of The Georges Family Trust, owned the real property located at or about 20720 Normandie Avenue, Torrance, California, in August 2018.

4. Defendant James T. Georges, in individual and representative capacity as trustee of The Georges Family Trust, owns the real property located at or about 20720 Normandie Avenue, Torrance, California, currently.

5. Defendant Arcelia Georges, in individual and representative capacity as trustee of The Georges Family Trust, owns the real property located at or about 20720 Normandie Avenue, Torrance, California, currently.

6. Defendant Pit Stop Burgers, Inc. owned Pit Stop Burgers located at or about 20720 Normandie Avenue, Torrance, California, in August 2018.

7. Defendant Pit Stop Burgers, Inc. owns Pit Stop Burgers ("Restaurant") located at or about 20720 Normandie Avenue, Torrance, California, currently.

8. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities,

1 connections, and responsibilities of the Defendants and Does 1 through 10,
2 inclusive, are ascertained.

3
4 **JURISDICTION & VENUE:**

5 9. The Court has subject matter jurisdiction over the action pursuant to 28
6 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
7 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8 10. Pursuant to supplemental jurisdiction, an attendant and related cause
9 of action, arising from the same nucleus of operative facts and arising out of
10 the same transactions, is also brought under California's Unruh Civil Rights
11 Act, which act expressly incorporates the Americans with Disabilities Act.

12 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
13 founded on the fact that the real property which is the subject of this action is
14 located in this district and that Plaintiff's cause of action arose in this district.

15
16 **FACTUAL ALLEGATIONS:**

17 12. Plaintiff went to the Restaurant in August 2018 to eat.

18 13. The Restaurant is a facility open to the public, a place of public
19 accommodation, and a business establishment.

20 14. Transaction counters are one of the facilities, privileges, and advantages
21 offered by Defendants to patrons of the Restaurant.

22 15. Unfortunately, the transaction counter at the Restaurant was more than
23 36 inches in height. In fact, the transaction counter was 42 inches high.

24 16. There was no lowered, 36 inch portion of the transaction counter at the
25 Restaurant for use by persons in wheelchairs.

26 17. Currently, the transaction counter at the Restaurant is more than 36
27 inches in height.

28 18. Currently, there is no lowered, 36 inch portion of the transaction

1 counter at the Restaurant for use by persons in wheelchairs.

2 19. Restrooms are another one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Restaurant.

4 20. The plumbing underneath the sink was not wrapped to protect against
5 burning contact.

6 21. Currently, the plumbing underneath the sink is not wrapped to protect
7 against burning contact.

8 22. Plaintiff personally encountered these barriers.

9 23. This inaccessible facility denied the plaintiff full and equal access and
10 caused him difficulty, discomfort, and embarrassment.

11 24. Plaintiff plans to return and patronize the Restaurant but is deterred
12 from visiting until the defendants remove the barriers.

13 25. The defendants have failed to maintain in working and useable
14 conditions those features required to provide ready access to persons with
15 disabilities.

16 26. The barriers identified above are easily removed without much
17 difficulty or expense. They are the types of barriers identified by the
18 Department of Justice as presumably readily achievable to remove and, in fact,
19 these barriers are readily achievable to remove. Moreover, there are numerous
20 alternative accommodations that could be made to provide a greater level of
21 access if complete removal were not achievable.

22 27. One common barrier removal project is modifying transaction counters
23 to make a portion of the counter accessible. This is a simple construction task,
24 well within the capabilities of any general contractor. The task can be
25 completed easily and for a modest price.

26 28. Insulation can be installed under the sink at a cost of no more than \$25.

27 29. Plaintiff is deterred from returning and patronizing the Restaurant
28 because of his knowledge of the barriers that exist. Plaintiff will, nonetheless,

1 return to assess ongoing compliance with the ADA and will return to patronize
2 the Restaurant as a customer once the barriers are removed.

3 30. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the Complaint to provide proper notice regarding the scope of this
7 lawsuit once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to his
11 disability removed regardless of whether he personally encountered them).

12
13 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
14 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
15 Defendants.) (42 U.S.C. section 12101, et seq.)

16 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 32. Under the ADA, it is an act of discrimination to fail to ensure that the
20 privileges, advantages, accommodations, facilities, goods and services of any
21 place of public accommodation is offered on a full and equal basis by anyone
22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
23 § 12182(a). Discrimination is defined, inter alia, as follows:

- 24 a. A failure to make reasonable modifications in policies, practices,
25 or procedures, when such modifications are necessary to afford
26 goods, services, facilities, privileges, advantages, or
27 accommodations to individuals with disabilities, unless the
28 accommodation would work a fundamental alteration of those

1 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

2 b. A failure to remove architectural barriers where such removal is
3 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
4 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
5 Appendix “D.”

6 c. A failure to make alterations in such a manner that, to the
7 maximum extent feasible, the altered portions of the facility are
8 readily accessible to and usable by individuals with disabilities,
9 including individuals who use wheelchairs or to ensure that, to the
10 maximum extent feasible, the path of travel to the altered area and
11 the bathrooms, telephones, and drinking fountains serving the
12 altered area, are readily accessible to and usable by individuals
13 with disabilities. 42 U.S.C. § 12183(a)(2).

14 33. In areas used for transactions where counters have cash registers and
15 are provided for sales or distribution of goods or services to the public, at least
16 one of each type shall have a portion of the counter which is at least 36 inches
17 in length with a maximum height of 36 inches above the floor. 1991 Standards
18 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
19 counter is a parallel approach, such as in this case, there must be a portion of
20 the sales counter that is no higher than 36 inches above the floor and 36 inches
21 in width and must extend the same depth as the rest of the sales or service
22 counter top. 2010 Standards § 904.4 & 904.4.1.

23 34. Here, no such accessible counter has been provided in violation of the
24 ADA.

25 35. Hot water and drain pipes under lavatories must be insulated or
26 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
27 2010 Standards § 606.5.

28 36. Here, the failure to wrap the plumbing underneath the sink is a violation

1 of the ADA.

2 37. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 38. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7 39. Given its location and options, plaintiff will continue to desire to
8 patronize the Restaurant but he has been and will continue to be discriminated
9 against due to the lack of accessible facilities and, therefore, seeks injunctive
10 relief to remove the barriers.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 40. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 41. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 42. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16
17 Dated: September 7, 2018

CENTER FOR DISABILITY ACCESS

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19
20 By:



21
22 Chris Carson, Esq.
23 Attorney for plaintiff
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